



SUMMATIVE (FORMAL) ASSESSMENT: MODULE 3B

**THE INSOLVENCY SYSTEM OF THE UNITED KINGDOM
(ENGLAND AND WALES)**

This is the **summative (formal) assessment** for **Module 3B** of this course and is compulsory for all candidates who selected this module as one of their compulsory modules from **Module 3**. Please read instruction 6.1 on the next page very carefully.

If you selected this module as **one of your elective modules**, please read instruction 6.2 on the next page very carefully.

The mark awarded for this assessment will determine your final mark for **Module 3B**. In order to pass this module, you need to obtain a mark of 50% or more for this assessment.

INSTRUCTIONS FOR COMPLETION AND SUBMISSION OF ASSESSMENT

Please read the following instructions very carefully before submitting / uploading your assessment on the Foundation Certificate web pages.

1. You must use this document for the answering of the assessment for this module. The answers to each question must be completed using this document with the answers populated under each question.
2. All assessments must be submitted electronically in MS Word format, using a standard A4 size page and a 11-point Arial font. This document has been set up with these parameters - **please do not change the document settings in any way. DO NOT** submit your assessment in PDF format as it will be returned to you unmarked.
3. No limit has been set for the length of your answers to the questions. However, please be guided by the mark allocation for each question. More often than not, one fact / statement will earn one mark (unless it is obvious from the question that this is not the case).
4. You must save this document using the following format: **[studentID.assessment3B]**. An example would be something along the following lines: 202223-336.assessment3B. **Please also include the filename as a footer to each page of the assessment** (this has been pre-populated for you, merely replace the words “studentID” with the student number allocated to you). Do not include your name or any other identifying words in your file name. **Assessments that do not comply with this instruction will be returned to candidates unmarked.**
5. Before you will be allowed to upload / submit your assessment via the portal on the Foundation Certificate web pages, you will be required to confirm / certify that you are the person who completed the assessment and that the work submitted is your own, original work. Please see the part of the Course Handbook that deals with plagiarism and dishonesty in the submission of assessments. **Please note that copying and pasting from the Guidance Text into your answer is prohibited and constitutes plagiarism. You must write the answers to the questions in your own words.**
- 6.1 If you selected Module 3B as one of your **compulsory modules** (see the e-mail that was sent to you when your place on the course was confirmed), the final time and date for the submission of this assessment is **23:00 (11 pm) GMT on 1 March 2024**. The assessment submission portal will close at 23:00 (11 pm) GMT on 1 March 2024. No submissions can be made after the portal has closed and no further uploading of documents will be allowed, no matter the circumstances.
- 6.2 If you selected Module 3B as one of your **elective modules** (see the e-mail that was sent to you when your place on the course was confirmed), you have a **choice** as to when you may submit this assessment. You may either submit the assessment by **23:00 (11 pm) GMT on 1 March 2024** or by **23:00 (11 pm) BST (GMT +1) on 31 July 2024**. If you elect to submit by 1 March 2024, you **may not** submit the assessment again by 31 July 2024 (for example, in order to achieve a higher mark).
7. Prior to being populated with your answers, this assessment consists of **9 pages**.

ANSWER ALL THE QUESTIONS

QUESTION 1 (multiple-choice questions) [10 marks in total]

Questions 1.1. - 1.10. are multiple-choice questions designed to assess your ability to think critically about the subject. Please read each question carefully before reading the answer options. Be aware that some questions may seem to have more than one right answer, but you are to look for the one that makes the most sense and is the most correct. When you have a clear idea of the question, find your answer and **mark your selection on the answer sheet by highlighting the relevant paragraph in yellow**. Select only **ONE** answer. Candidates who select more than one answer will receive no mark for that specific question.

Question 1.1

Please select the **most correct ending** to the following statement:

The Administration (Restrictions on Disposal etc to Connected Persons) Regulations 2021 restrict pre-pack sales which constitute a substantial disposal of the company's property to connected parties where the disposal occurs . . . :

- (a) within 10 weeks of the commencement of the administration.
- (b) within eight weeks of the commencement of the administration.**
- (c) within four weeks of the commencement of the administration.
- (d) on the day the company enters administration.

Question 1.2

What is the **maximum length** of a Moratorium under Part 1A of the Insolvency Act 1986 to which creditors can consent without any application to the court?

- (a) 40 business days.
- (b) One year and 20 business days.
- (c) One year and 40 business days.
- (d) One year.**

Question 1.3

Which of the following **is not** a requirement for a company that wishes to enter into a Restructuring Plan under Part 26A of the Companies Act 2006?

- (a) The company has encountered, or is likely to encounter, financial difficulties that are affecting, or will or may affect, its ability to carry on business as a going concern.
- (b) A compromise or arrangement is proposed between the company and its creditors, or any class of them, or its members, or any class of them.
- (c) The purpose of the compromise or arrangement is to eliminate, reduce or prevent, or mitigate the effect of, any of the said financial difficulties.

(d) The company is, or is likely to become, unable to pay their debts, as defined under section 123 of the Insolvency Act 1986.

Question 1.4

In cases where the Administration (Restrictions on Disposal etc. to Connected Persons) Regulations 2021 apply and an independent report from an Evaluator is obtained, the independent report must be obtained by whom?

- (a) The administrator.
- (b) Any secured creditor with the benefit of a qualifying floating charge.
- (c) The purchaser.
- (d) The company's auditor.

Question 1.5

Which one of the following **is not** a debtor-in-possession procedure?

- (a) Administration.
- (b) Restructuring Plan.
- (c) Scheme of Arrangement.
- (d) Company Voluntary Arrangement.

Question 1.6

Section 426 of the Insolvency Act 1986 contains provisions for UK courts to provide assistance to overseas courts from certain listed jurisdictions. Which of the following is not a listed jurisdiction under section 426?

- (a) Malaysia.
- (b) Australia.
- (c) India.
- (d) Hong Kong.

Question 1.7

Which one of the following **is not**, in itself, a separate ground for disqualification of a director under the Company Directors Disqualification Act 1986?

- (a) Wrongful trading.
- (b) Breach of fiduciary duty.

- (c) Being found guilty of an indictable offence in Great Britain.
- (d) Being found guilty of an indictable offence overseas.

Question 1.8

The filing by a company's directors of a Notice of Intention to Appoint an administrator produces a short-term moratorium on actions against the company which lasts for how long?

- (a) Five business days.
- (b) Twenty business days.
- (c) Ten days.
- (d) Three months.

Question 1.9

Which of the following statements is incorrect?

- (a) An insolvency officeholder from an EU Member State will be automatically recognised by the courts in the UK whether the officeholder was appointed before or after Brexit.
- (b) An insolvency officeholder from an EU Member State is automatically recognised by the courts in the UK if appointed before Brexit.
- (c) An insolvency officeholder from an EU Member State appointed after Brexit may apply to a UK court for recognition under the Cross Border Insolvency Regulations.
- (d) An insolvency officeholder from an EU Member State cannot apply to a UK court for recognition under section 426 of the Insolvency Act 1986.

Question 1.10

Under section 216 of the Insolvency Act 1986, a director of a company which has been wound up insolvent may not, unless an exception applies, be a director of a company that is known by a prohibited name if the director has been a director of the company during which period prior to the insolvent liquidation?

- (a) Six months.
- (b) Five years.
- (c) Two years.
- (d) Twelve months.

QUESTION 2 (direct questions) [10 marks]

Question 2.1 [maximum 5 marks]

Who may bring an action under: (i) section 245 of the Insolvency Act 1986, (ii) section 6 of the Company Directors Disqualification Act 1986, (iii) section 246ZB of the Insolvency Act 1986, and (iv) section 127 of the Insolvency Act 1986?

Section 245 of the Insolvency Act of 1986 (“Section 245”)

Section 245 of the Insolvency Act Applies in Administrations and Liquidations. Section 245 avoids floating charges that meet the criteria for avoidance **automatically** without need for an application to the court to void the floating charges. However, in the event of a dispute between the insolvency practitioners and the floating charge holder regarding the voidance of the charge, applications can be made to the court to determine the dispute (<https://thelawstudent.blog/avoidance-of-certain-floating-charges-s-245-ia-1986> , Paragraph 2, accessed on 29th February 2024 at 21.15PM)

It, therefore, follows that action may be brought under Section 245 by an **Administrator**, a **Liquidator** or the “aggrieved” **floating charge holder**.

Section 6 of the Company Directors Disqualification Act 1986 (“Section 6”)

Applications for disqualification of Directors under Section 6 are made by:

- a. **The Secretary of State for Business, Energy and Industrial Strategy** (acting through the Insolvency Service); or
- b. **The Official Receiver** (which is part of the Insolvency Service) on the instructions of the State for Business, Energy and Industrial Strategy (in Compulsory Liquidations)

Section 246ZB of the Insolvency Act 1986 (“Section 246ZB”)

Section 246ZB applies when a company enters an **insolvent administration**. It, therefore, follows that action under section 246ZB can be brought by an **Administrator** (<https://www.legislation.gov.uk/ukpga/1986/45/section/246ZB> , accessed on 29 February 2024 at 21.40PM) .

Section 127 of the Insolvency Act (“Section 127”)

Section 127 applies in **Compulsory Liquidations**. It, therefore, follows that applications under Section 127 are brought by a **Liquidator**.

Question 2.2 [maximum 5 marks]

List any **five (5)** of the debts which do not form part of the payment holiday under Part A1 of the Insolvency Act 1986 when a company is subject to a Moratorium.

Debts that do not form part of the “payment holiday” under Part A1 of the Insolvency Act of 1986 are any amounts relating to:

- i. The monitor’s remuneration or expenses
- ii. Good or services supplied during the moratorium
- iii. Rent payable in respect of a period during the moratorium
- iv. Wages or salary arising under a contract of employment
- v. Redundancy payments
- vi. Payment obligations arising under a financial instrument or contract

(<https://www.legislation.gov.uk/ukpga/1986/45/part/A1?timeline=false#:~:text=A1Overview,set%20out%20in%20this%20Part> , Part A18 titled “Overview and construction of references to payment holidays”, accessed on 29 February 2024 at 22.05PM).

QUESTION 3 (essay-type questions) [15 marks in total]

Question 3.1 [maximum 6 marks]

Can an administrator who wishes to continue to operate the business of the company in administration require suppliers of goods and services to continue to supply those goods and services during the administration?

Yes. An administrator who wishes to continue operations in administration can rely on Sections 233A and Section 233B of the Insolvency Act of 1986 to safeguard supplies of goods and services that are critical to the operations of the business.

Section 233A - Further protection of essential supplies

Section 233A voids any insolvency-related terms of contracts of supply of essential goods and services (*i.e.*, any provisions that allow the supplier to terminate the contract or supply upon the commencement of insolvency proceedings) when a company enters an administration or a voluntary arrangement. Effectively, suppliers of essential goods and services do not have a unilateral right to terminate contracts and supply in the context of administration proceedings.

(<https://www.legislation.gov.uk/ukpga/1986/45/section/233A/2020-10-29> , accessed on 29th February 2024 at 23:10PM)

Section 233A(7) cross-references Section 233(3) for details of goods and services that qualify as “essential goods and services”. Section 233(s) identifies essential goods and services as being electricity, water, gas, communication services and electronic means (e.g., POS, computer hardware and software, data storage etc.)

(<https://www.legislation.gov.uk/ukpga/1986/45/section/233> , accessed on 29th February 2024 at 23:15PM).

In an administration, a supplier can only terminate a contract for or supply of essential goods and services if the conditions under 233A(4) and 233A(5) are met, being:

1. Under Section 233A(4): consent of the administrator, permission of the court, payment for supplies made during the administration period is not made within 28 days of its due date
2. Under Section 233A(5): the supplier requires, in writing, that the administrator personally guarantees payment for supplies during the administration period and the administrator does not provide such guarantee within 14 days of the written notice.

An administrator, therefore, can require a supplier of essential goods and services to continue making supply during the course of administration proceedings provided the administrator takes necessary action that prevents the conditions under 233A(4) and 233A(5) from crystallizing.

Section 233B - Protection of supplies of goods and services

Section 233B voids provisions of contracts for supply of goods and services that provide that the contracts or supply would terminate by virtue of commencement of a “relevant insolvency procedure” or which give the supplier the right to terminate the contract or

supply by virtue of a company entering a “relevant insolvency procedure”. Section 233B(1) identifies various “relevant insolvency procedures” which includes administration proceedings.

(<https://www.legislation.gov.uk/ukpga/1986/45/section/233B/data.pdf>, accessed on 29th February 2024 at 23:40PM)

Under 233B(4), suppliers who may have crystallized rights to terminate their contracts or supply before commencement a “relevant insolvency procedure” but did not exercise such rights before the commencement of the “relevant insolvency procedure” cannot exercise such rights after the commencement of the “relevant insolvency procedure”.

In the context of administration proceedings, under Section 233B(5), a supplier can terminate a contract or supply for goods and services only if: either the administrator consents to the termination or the court permits the termination on grounds that the continued supply will cause the supplier hardship.

Section 233B(7) provides further protection to a company that is undergoing a “relevant insolvency procedure” by prohibiting a supplier from tying continued supplies to payment of amounts relating to supplies made before the commencement of the “relevant insolvency procedure”.

An administrator, therefore, can rely on the protection provided by Section 233B to require a supplier to continue making supplies during the course of the administration provided they take action to ensure the conditions that may permit a termination under the section do not crystallize.

Question 3.2 [maximum 9 marks]

Explain the order of priority of payments in a liquidation and explain the nature of the rights enjoyed by each class of creditor or expense. How would this priority change if the company had been subject to a Moratorium under Part A1 of the Insolvency Act 1986 during the 12-week period prior to the commencement of the liquidation?

The priority of payments in a liquidation generally applies to those assets that a liquidator will, ordinarily, come into possession or control of (usually, the assets subject to floating charges or any uncharged assets). Assets that are subject to fixed charged (e.g., mortgaged land), or those that are specifically and effectively assigned to a creditor (such as debts assigned to a receivables financier), or those that whose title is not with the debtor company (e.g., by operation of retention of title clauses or those subject to hire purchase terms) are usually realized by the respective beneficiaries outside the scope of liquidation proceeding.

For floating charge assets that come into the control of a liquidator the priority of payments in hierarchical order is (WG 16 FCIL Guidance Text Mod 3B Insolvency System of the UK 202324 (FINAL), Page 52 - Page 54) :

- a. **Expenses/Costs of the winding up proceedings** - Section 115 of the Insolvency Act of 1986 (<https://www.legislation.gov.uk/ukpga/1986/45/section/115#:~:text=115%20Expenses%20of%20voluntary%20winding%20up.&text=%5BF1After%20the%20payment%20of,priority%20to%20all%20other%20claims.>, accessed on 1st March 2024, at 19.50PM), read together with rule 6.42 (4) - Creditors’ Voluntary Liquidations - (<https://www.legislation.gov.uk/uksi/2016/1024/rule/6.42/made>, accessed on 1st March 2024, at 19.55PM) and rule 7.108 (4) - Compulsory Liquidations - (<https://www.legislation.gov.uk/uksi/2016/1024/rule/7.108/made>, accessed on 1st

March 2024, at 20.00PM) give priority to expenses of the winding up proceedings over the preferential creditors, floating charge holders and unsecured creditors. These expenses themselves have an order of priority amongst themselves and comprise, in order of priority are:

- i. Expenses incurred by the liquidator in preserving, realizing or recovering any assets of the Company
 - ii. Cost of security provided by the liquidator
 - iii. Cost payable to any person in relation to support to the liquidation through preparation of the Statement of Affairs or Accounts for the debtor
 - iv. Disbursements incurred by the liquidator including, but not limited to, expenses incurred by the liquidation committee
 - v. Remuneration payable to any person retained by the Liquidator to provide services to the debtor
 - vi. Corporation tax arising as a result of gains on disposal of assets within the liquidation
 - vii. Any other expenses properly incurred by the liquidator in discharging their mandate
- b. **Preferential Creditors of the Company** - Preferential claims, primarily, comprise specific or limited employee (including pension contributions) and tax claims. Preferential claims are classified into Primary and Secondary Preferential Claims, with Primary Preferential Claims taking priority over the Secondary Preferential Claims. The Primary Preferential Claims comprise the portion of employee claims that are within the limits set for preferential claims and the levies set on production of coal and steel, while the Secondary Preferential Claims comprise subrogated claims in respect of compensation payments made by the Financial Services Compensation Scheme to depositors in financial institutions that go insolvent and the crown taxes that are categorized as preferential claims (e.g., PAYE, VAT, National Insurance Deductions). The preferential claims classified as Primary and Secondary Preferential Claims rank equally amongst themselves within their respective classes, i.e., all Primary Preferential Claims rank equally amongst themselves and all Secondary Preferential Claims rank equally amongst themselves.
- c. **(Where Applicable) The “Prescribed Part”** - The prescribed applies in relation to floating charges created on or after 15 September 2003. The prescribed part is a portion of the net assets that would, otherwise, be available for distribution to creditors secured by floating charges that is set aside for distribution to the unsecured creditors of the debtor. There are set limits for the prescribed part which effectively places it in the range of GBP 5,000 to GBP 800,000.
- d. **Creditors secured by Floating Charges** - Secured creditors who holder floating charges receive distribution after the Prescribed Part (where applicable) or after the preferential creditors (where the prescribed part is not applicable). Creditors secured by floating charged usually have the right/opportunity to appoint administrators before liquidators are appointed (by virtue of the process for triggering compulsory and Creditors’ voluntary liquidations). If they elect to appoint administrators, liquidation proceedings will not commence until after the conclusion of the administration proceedings.
- e. **Unsecured Creditors** - Unsecured creditors receive payment last within the creditor category.

- f. **Shareholders** - In the unlikely event that the proceeds of realization suffice to settle all creditor claims in full (including allowable interest), the surplus proceeds are made available for distribution to the shareholders of the debtor in line with respective shareholding.

Effect of liquidation proceedings being preceded by Moratorium Proceedings

Where a company enters liquidation (or indeed administration proceedings) within 12 weeks of the end of moratorium proceedings, the priority of debts in the liquidation will differ from the priority of debts that existed pre-moratorium ((WG 16 FCIL Guidance Text Mod 3B Insolvency System of the UK 202324 (FINAL), Page 39).

Specifically, under section 174A (<https://www.legislation.gov.uk/ukpga/1986/45/section/174A#:~:text=%5BF1174AMoratorium%20debts%20etc,the%20company%20under%20Part%20A1>. accessed on 1st March 2024 at 20.40PM) , some unpaid pre-moratorium or moratorium debts which are not part of the “payment holiday” during the moratorium are paid in priority to the expenses of the liquidation. The effect is that some unsecured debts (i.e., unsecured debts which were payable during the moratorium but which remain unpaid at the commencement of the liquidation proceedings) can acquire super priority over liquidation expenses in subsequent liquidation proceedings.

QUESTION 4 (fact-based application-type question) [15 marks in total]

Prior to going into compulsory liquidation on 28 February 2024, under pressure from its bank, Ambitus Bank plc, and in order to prevent it from demanding repayment of the company’s loans, Blazer Laser Limited (the Company), granted a debenture in favour of Ambitus Bank plc in June 2023. The debenture contained a floating charge over the whole of the Company’s undertaking.

The winding up order followed a creditor’s winding up petition issued on 13 January 2024.

Sometime in January 2023, as the Company continued to suffer cash flow problems, the directors approved the sale of two laser cutting machines to Angela Bannister (a director) for GBP 40,000 in cash. The machines had been bought for GBP 100,000 a year before.

A month before the winding up order was made, Angela Bannister received an email from Aluminium Alumi Ltd, one of the Company’s key suppliers. The supplier demanded immediate payment of all sums owing to it and informed the Company that further supplies would only be made on a cash on delivery basis. As the continued supply of metal was seen as essential by the Company, the board authorised a payment of GBP 20,000 to cover existing liabilities and agreed to further payments, on a cash on delivery basis, for further supplies which amounted to further payment of GBP 8,000 up to the date of the winding up order.

The liquidator has asked for advice whether any action may be taken in respect of the floating charge in favour of Ambitus Bank plc and the two subsequent transactions.

Using the facts above, answer the questions that follow.

Identify the relevant issues and statutory provisions and consider whether the liquidator may take any action in relation to:

Question 4.1 [maximum 5 marks]

The floating charge in favour of Ambitus Bank plc;

Section 245 of the Insolvency Act of 1986 voids, automatically, any floating charges that are created within the relevant period before the commencement of administration or liquidation proceedings. In the case of connected persons, the relevant period is 2 years before the commencement of administration or liquidation proceedings. In the case of unconnected persons, the relevant period is 12 months before the commencement of administration or liquidation proceedings provided that the Company is unable to pay its debts at the time of creation of the charge or becomes unable to pay its debts as a consequence of the transaction creating the charge. ([https://www.legislation.gov.uk/ukpga/1986/45/section/245#:~:text=245%20Avoidance%20of%20certain%20floating%20charges.&text=\(b\)in%20the%20case%20of,of%20insolvency%2C%20F1.%20.%20](https://www.legislation.gov.uk/ukpga/1986/45/section/245#:~:text=245%20Avoidance%20of%20certain%20floating%20charges.&text=(b)in%20the%20case%20of,of%20insolvency%2C%20F1.%20.%20)), accessed on 1st March 2023 at 20.55PM).

In the case of Blaser Lazer Limited, the effective date of the commencement of the liquidation of the Company is 13 January 2024, the date of the winding up petition. The floating charge in favour of Ambitus Bank PLC was created in June 2023. This is well within the relevant period of 12 months applicable to Ambitus Bank as an unconnected party. The floating charge falls within the scope of Section 245. Furthermore, the motivation for creation of the charge was to prevent Ambitus bank from demanding payment of its loans which suggests the Bank's right to demand payment had crystallized and the Company was not in a position to pay (i.e., the Company was in fact unable to pay its debts at the time of creation of the charge).

Under Section 245(2), the only floating charges that are not voidable despite being created within the relevant period are those floating charges that are accompanied by new consideration either in the form of new money (or good and services supplied) or discharge or reduction of any debt of the company and accompanying interest.

In the case of Blaser Lazer and Ambitus Bank, there was no new money or supply of goods and services or reduction in the Company's debt. The floating charge was simply to prevent Ambitus Bank from calling its debt.

The creation of the charge by the management of Blaser Lazer was a genuine attempt to forestall insolvency and, therefore, cannot be considered to be a preference under the operation of Section 239 of the Insolvency Act of 1986. However, the fact that the charge was not created with the intention to prefer is of no consequence in considering whether to void it under the operation of Section 245 (*Re Lee Manning v Neste AB*, <https://www.enterprisechambers.com/wp-content/uploads/2022/10/Manning-Gunn-v-Neste-AB-Rami-Farah-2022-EWHC-2578.pdf>), Paragraph 22, accessed on 1st March 2024 at 21.11PM)

Therefore, there is sufficient ground/basis to void the Ambitus Bank charge and the liquidator should void it and communicate the position to Ambitus Bank. In the event Ambitus Bank disagrees with the liquidator, the liquidator can open proceedings under Section 245 to get the court to void the charge.

Question 4.2 [maximum 6 marks]

The sale of the laser cutting machines; and

Section 238 of the Insolvency Act of 1986 (<https://www.legislation.gov.uk/ukpga/1986/45/section/238>, accessed on 1st march 2024 at 21.21PM) gives the officeholder, including a liquidator, the option of applying to the court for an order voiding any transaction entered into by the Company and any person at undervalue within the relevant time. The relevant time is defined under Section 240 (1) and 240 (3) (e) of the Insolvency Act of 1986 (<https://www.legislation.gov.uk/ukpga/1986/45/section/240>, accessed on 1st March 2023 at 21.23PM) as 2 years before the onset of insolvency proceedings for connected persons. Furthermore, under Section 240(2), in the case of connected persons, there is rebuttable presumption that the company was unable to pay its debts at the time of the transaction at undervalue.

In the case of Blaser Lazer Limited, the effective date of the commencement of the liquidation of the Company is 13 January 2024, the date of the winding up petition. The relevant period for connected persons in this case is, therefore, January 2022. The transaction with Angela Bannister for sale of two laser cutting machines in January 2023 falls within the scope of Section 238. Furthermore, the motivation given for the transaction is that the company was suffering cash flow problems, suggesting that it was unable to pay its debts at the time of the transaction (i.e., the presumption under 240(2) cannot be rebutted).

The machine, which was just one year old at the time of sale, was sold for only 40% of its buying price. The discount applied does not appear reasonable assuming normal usage and wear and tear. Furthermore, there is no evidence that the Company made any efforts to market the assets to secure best value.

All these observations point to a textbook case of a transaction at undervalue that can be challenged under Section 238 of the Insolvency Act. The Liquidator should make an application to the Court to void the transaction for the sale of two laser machines and to require that Angela Bannister returns the property to the Company.

Question 4.3 [maximum 4 marks]

The payments to Aluminium Alumini Ltd.

Aluminium Alumini limited received full payment for its unsecured debt a month before the Company went into liquidation. The question is whether the payments to Aluminium Alumini Limited qualify as a voidable preference under the operation of Section 239 of the Insolvency Act of 1986.

Under Section 239, an office holder has the option of applying to the court to void a preference given within the relevant time. The relevant time is defined under Section 240 (1) and 240 (3) (e) of the Insolvency Act of 1986 (<https://www.legislation.gov.uk/ukpga/1986/45/section/240> , accessed on 1st March 2023 at 21.23PM) as 2 years before the onset of insolvency proceedings for connected persons

and 6 months for unconnected persons. The payment to Aluminium Alumini limited, therefore, falls within the relevant time under Section 239.

However, under Section 239 (5), the court will not void a preference that is not motivated by a desire to put a creditor in a better position than the creditor would, otherwise, be in if the Company went into liquidation.

In the case of Aluminium Alumini, the payment by the Company was not motivated by the desire to prefer Aluminium Alumini over other creditors of the Company, rather, it was motivated by the desire to secure supplies that the Company viewed as being essential.

The preference to Aluminium Alumini Limited, therefore, qualifies for the exclusion under Section 239(5). The Liquidator, therefore, has no cause of action against Aluminium Alumini and should not take any action in relation to this payment.

*** End of Assessment ***